HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1994/2001 (M/S)
(Old No. 33368/2000)
State of U.P. through
E.E., Tunnel & Power House Revision-I,

Vs

The P.O. Labour Court, Dehradun
& another.

Approved for reporting

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~~Not Approved for Reporting~~

Date of decision 2.9.2004.

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1994 of 2001 (MS)
(Old No. 33368/2000)

State of U.P. through
Executive Engineer,
Tunnel & Power House Division-I,
Dakpathar, Dehradun. ……. Petitioners

Versus

The Presiding Officer,
Labour Court, Dehradun & another. ……. Respondents

Mr. Nand Prasad, learned Standing Counsel for the State.
Mr. M.C. Pant, learned counsel for respondent No. 2.

Dated: 02.9.2004

Hon'ble Rajesh Tandon J.

By the present writ petition, the petitioner has prayed for the issue of a writ, order or direction in the nature of certiorari quashing the award dated 30.11.1998 passed by respondent No. 1 i.e. the Presiding Officer, Labour Court, Dehradun.

FACTS:

Briefly facts giving rise to the present writ petition are that respondent no. 2 was appointed as Beldar on 1.10.86 and he continued up to 12.12.1996 in the department of petitioner, but on 13.12.1996, his services were terminated without any prior notice, which is in violation of the provisions contained under Section- 6 N of the Industrial Disputes act 1947.

Therefore, the respondent no. 2 raised the dispute under section 4-K of the U.P. Industrial Disputes Act, 1947. Following matter was referred to the Presiding Officer, Labour Court, Dehradun:

''क्या सेवायोजकों द्वारा अपने श्रमिक श्री महेन्द्र सिंह पुत्र श्री किशोरी, दैनिक वेतनभोगी श्रमिक की सेवायें दिनांक 13.12.96 से

समाप्त किया जाना अनुचित एवं अवैधानिक है, यदि हॉ तो वादी श्रमिक क्या हितलाभ/अनुतोष पाने का अधिकारी है एवं अन्य किस विवरण सहित।''

The Labour Court after hearing both the parties held that the termination order passed by the petitioner – department is illegal and therefore, directed the petitioner to reinstate respondent No. 2. Besides this, the Labour Court also awarded 50% of the back wages to the respondent No. 2 and Rs. 500/- towards costs was awarded in favour of the respondent No. 2.

Being aggrieved by this judgment of the Labour Court, petitioner has preferred the present writ petition.

I have heard learned counsel for both the parties and perused the record.

After hearing both the parties, following points arise for determination:

i. Whether the finding of the Labour Court with regard to 240 days can be said to be Illegal?
ii. Whether, the Irrigation Department, where the respondent No. 2 was working is not within the definition of the Industry?

Findings on Point no.i

The petitioner has stated that respondent No. 2 has not completed 240 days in whole calendar year.

The findings of the Labour Court, So far as point No. 1 is concerned, are quoted below: -

"वादी श्रमिक ने लिखित कथन दाखिल किया और उसकी पुष्टी में शपथपत्र भी दाखिल किया तथा दो कागज दाखिल किये।

सेवायोजकों को रजिस्टर्ड नोटिस भेजे जाने के बावजूद भी वह उपस्थित नही हुए और उनकी ओर से काई प्रार्थना पत्र भी प्राप्त नही हुआ।

वादी श्रमिक का केस है कि वह सेवायोजकों के आधीन 1.10.86 से दैनिक वेतन भोगी बेलदार के रूप में ऊपरी गंगा नहर खण्ड 4 मायापुर हरिद्वार में कार्यरत हुआ और उसके बाद वर्ष 1988 से ऊपरी गंगा नहर खण्ड 2 हरिद्वार व वर्ष 1990 से 1994 तक सिविल निर्माण खण्ड–2 ढ़ालीपुर के अधीन जुलाई 94 तक निरन्तर कार्यरत रहा और माह जुलाई 94 से सुरंग व विद्युत गृह डाकपत्थर के अधीन निरन्तर कार्यरत रहा परन्तु उसे 13.12.1996 को प्रतिवादी सं0 2 द्वारा बिना किसी पूर्व नोटिस के हटा दिया गया और नोटिस के बदले वेतन व छटनी मुआवजा नही दिया गया।

चूंकि वादी श्रमिक के लिखित कथन व शपथ पत्र का किसी भी प्रतिवादी क्षदा कोई प्रतिवाद नही दिया गया है अतः उ0प्र0 औद्योगिक विवाद नियमावली के नियम 12(9) के अर्न्तगत कार्यवाही करते हुए यह निर्णय दिया जाता है कि प्रतिवादी सं0 2 द्वारा वादी श्रमिक महेन्द्र सिंह पुत्र श्री किशोरी, दैनिक वेतन भोगी श्रमिक की सेवायें दि0 13.12.1996 से समाप्त किया जाना अनुचित व अवैधानिक है।"

So far as 52 Sundays and other paid holidays are concerned, the Apex Court has observed that while taking into consideration 240 days worked by the employee concerned, Sundays and other paid holidays have to be taken into consideration.

In the case of Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking of Corporation reported in AIR 1986 SC 458, it has been held as under :-

"The principles of statutory construction are well settled. Words occurring in statues of liberal import such as social welfare legislation and human rights legislation are not to be put in Procrustean beds or shrink of Liliputian dimension. In constructing these legislations the imposture of literal construction must be avoided and the prodigality of its

misapplication must be recognized and reduced. Judges ought to more concerned with the 'colour' the 'content' and the 'context' of such statues (we have borrowed the words from Lord Wilberforce's opinion in Prenn. Vs. Simmonds {(1971) 3ALLER)}. In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, insolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguists considerations. In one of the cases cited before us, that is, Surendra Kumar Verma Vs. Cenrtal Government Industrial Tribunal cum-Labour Court (1981) ISCR 798; (1981) 4SCC 443; 1981 SCC(L&S) 16, we had occasion to say,

"Semantic luxuries are misplaced in the interpretation of "bread and butter" statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions."

"Section 25-F of the Industrial Disputes Act is plainly intended to give relief of retrenched workmen. The qualification for relief under Section 25-F is that he should be a workman employed in an industry and has been in continuous service for not less than one year under an employer. What is continuous service has been defined and explained in Section 25-B of the Industrial Disputes Act. In the present case, the provision which is of relevance in Section 25-B (2)(a)(ii) which to the extent that it converts us, provides that a workman who is not in continuous service for a period of one year shall be deemed to be in continuous service for a period of one year if the workman, during a period of twelve calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than 240 days. The expression which

were required to construe is "actually worked under the employer". This expression, according to us, cannot mean those days only when the workman worked with hammer, sickle or per, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing order etc. The learned counsel for the management would urge that only those days which are mentioned in the Explanation to Section 25-(B)(2) should be taken into account of the purpose of calculating the number of days on which the workmen had actually worked though he had not so worked and no other days. We do not think that we are entitled to so constrain the construction of the expression "actually worked under the employer". The explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. It the expression "actually worked under the employer" is capable of comprehending the days during which the workman was in employment and was paid wages- and we see no impediment to so construe the expression. To give it any other meaning than what we have done would bring the object of Section 25-F very close to frustration. It is not necessary to give examples of how Section 25-F may be frustrated as they are too obvious to be stated.

In H.D.Singh Vs. Reserve Bank of India and others AIR 1986 SC 132 the following observations is as under: -

"That takes us to the question the appellant had qualified himself to sustain his claim to the benefits of Section 25-F. The appellant, as we will presently see, has given the number of days on which he worked, in his claim statement. The first respondent bank arranged posting Tikka Mazdoors, like the appellant, in such manner that they were denied the benefits of the Industrial Disputes Act. Since the first

respondent bank disputed the fact that the appellant had worked for sufficient number of days to entitle him to claim remedies under the Act, we think it necessary to refer to the facts as disclosed in the records. The advocate who appeared for the appellant before the Tribunal, Sri R.N. Srivastava, has filed an affidavit in this Court stating that he had filed written argument before the Tribunal explaining the mistake committed by the bank in the computation made by it of the number of working days of the appellant. From this affidavit, it is seen that the first respondent-bank put forward a case that the attendance register for the month of July 1976 had been destroyed and that Sundays and other holidays were not taken into account in computing the number of days that the appellant worked. We have also a supplementary affidavit filed by the appellant himself which throws further light about the number of days. In this affidavit, it is seen that he worked for 4 days in 1974, 154 days from January 1975 to December 1975 and 105 days from January 1976 to July 1976. The Appellant was denied work from July 1976. His affidavit shows that he had worked for 202 days from July 1975 to July 1976. According to him if we add 52 Sundays and 17 holidays the total number of days on which he worked comes to 271 days. The appellant charged the bank with having tampered with the records. To contradict the appellants case, the first respondent bank did not produced its record. The appellant wanted the relevant records to be filed but they were not produced. Grounds 18 to 20 of the special leave petition make mention of this plea of appellant. These grounds are met by the first respondent bank in their counter affidavit filed in this court by stating that "when the matter was before the Industrial Tribunal the registers in question were filed in another case before the Industrial Tribunal- cum Labour Court and produced in that court. However, I submit that now a attendance register had been destroyed but the payment

register are available with the respondent bank as proof of the number of days in which the appellant worked." In the absence of any evidence to the contrary, we have necessarily to draw the inference that the appellant's case that he had worked forever that 240 days from July 1975 to July 1976 is true."

From the aforesaid findings and evidence, it is clear that the respondent No. 2 has completed 240 days. No evidence has been led by the petitioner to controvert this finding of the Labour Court. Therefore, the service of the respondent No. 2 having been terminated without considering the provisions of Section 6-N of the Industrial Disputes Act, the respondent No. 2 has been rightly granted the reinstatement by the Labour Court.

Finding on Point No.ii:

So far as the second point is concerned as to whether the Irrigation Department is covered under the definition of the Industry, the petitioner has stated that the Irrigation Department is not covered under the definition of Industry.

The matter has already been adjudicated in the case of State of U.P. Vs. Presiding Officer, Labour Court & another reported in 2003(96) FLR 317 by the Uttaranchal High Court by his Lordship Hon'ble Mr. Justice P.C. Verma after referring the judgment of the Apex Court in Des Raj & others Vs State of Punjab & others and Banglore Water Supply & Sewerage Board Vs. A. Rajappa's case. Relevant paragraph 13 & 14 of the judgment of the Uttaranchal High Court are quoted below:

"The Apex Court in Des Raj and others Vs State of Punjab and others reported in 1988 (57) FLR 176 (SC), after applying the aforesaid text on the nature of activities carried on by the Irrigation Department held that Irrigation Department is an 'Industry'.

Since the Kalagrah unit is the branch of Irrigation Department, therefore, the same is also an Industry within the definition of 'Industry' under the U.P. Industrial Disputes Act in view of the law laid down by the Apex Court in Bangalore Water Supply and Sewerage Board Vs A. Rajappa's case."

The Irrigation Department has been held to be an industry and as such, I find no infirmity in the order passed by the Labour Court.

Conclusion:

The workman has proved that he has completed 240 days of working in preceding 12 months and that the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947 has not been complied with by the employer and therefore, termination order is wholly illegal.

In view of the findings recorded above, I do not find any infirmity in the order passed by the Presiding Officer, Labour Court. The findings recorded by the Labour Court are findings of fact and this court, therefore in exercise of powers under Article 226 of the Constitution of India, declines to interfere with the findings recorded by the Labour Court.

Accordingly, writ petition is dismissed. No order as to costs.

(Rajesh Tandon J.)

Dt.: 02.9.2004.
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